

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 670

Introduced by Senator Steinberg

February 22, 2013

An act to amend Sections 2225 and 2234 of, and to add Section 2221.5 to, the Business and Professions Code, and to amend Section 11529 of the Government Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 670, as amended, Steinberg. Physicians and surgeons: drug prescribing privileges: investigation.

(1) Existing law authorizes investigators and representatives of the Medical Board of California, among others, to inquire into any alleged violation of the Medical Practice Act or any other federal or state law, regulation, or rule relevant to the practice of medicine or podiatric medicine, and to inspect documents relevant to those investigations, including the inspection and copying of any document relevant to an investigation where patient consent is given.

Existing law requires specified persons, including the administrator of a peer review body, to file a report with the board within 15 days after the effective date of any specified action taken against a licensee for a medical disciplinary cause or reason. Existing law also requires a coroner to make a report to the board, among other specified entities, when he or she receives information that indicates that a death may be the result of a physician and surgeon's, podiatrist's, or physician assistant's gross negligence or incompetence.

This bill would authorize the board, ~~if it receives a report pursuant to either of the provisions described above~~ *in any case* that involves the

death of a patient ~~from a prescription drug overdose~~, to inspect and copy the medical records of the deceased patient without the consent of the patient's next of kin or a court order in order to determine the extent to which the death was the result of ~~a prescriber's inappropriate conduct~~ *the physician and surgeon's violation of the Medical Practice Act*.

(2) Existing law requires the board to take action against any licensee who is charged with unprofessional conduct. Unprofessional conduct is defined for this purpose to include, among other things, the repeated failure by a licensee who is the subject of a board investigation, in the absence of good cause, to attend and participate in an interview scheduled by the mutual agreement of the licensee and the board.

This bill would revise that definition of unprofessional conduct to include the failure by a licensee who is the subject of a board investigation, in the absence of good cause, to attend and participate in an interview scheduled within 30 days of notification from the board.

(3) Existing law, the Administrative Procedure Act, authorizes the administrative law judge of the Medical Quality Hearing Panel to issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other licensee restrictions.

This bill would further authorize the administrative law judge to issue an interim order limiting the authority to prescribe, furnish, administer, or dispense controlled substances. The bill would also require the board, notwithstanding the authority of an administrative law judge to issue an interim order, to impose limitations on the authority of a physician and surgeon to prescribe, furnish, administer, or dispense controlled substances during a pending investigation if there is ~~a reasonable suspicion~~ *probable cause to believe* that the physician and surgeon has ~~engaged in overprescribing drugs or other behavior related to his or her drug-prescribing privileges that has resulted in the death of a patient~~ *prescribed, furnished, administered, or dispensed controlled substances in violation of the Medical Practice Act*.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2221.5 is added to the Business and
- 2 Professions Code, to read:

1 2221.5. Notwithstanding Section 11529 of the Government
2 Code, the board shall impose limitations on the authority of a
3 physician and surgeon to prescribe, furnish, administer, or dispense
4 controlled substances during a pending investigation if there is a
5 ~~reasonable suspicion~~ *probable cause to believe* that the physician
6 and surgeon has ~~engaged in either of the following: prescribed,~~
7 *furnished, administered, or dispensed controlled substances in*
8 *violation of the Medical Practice Act.*

9 ~~(a) Overprescribing drugs.~~

10 ~~(b) Other behavior related to his or her drug prescribing~~
11 ~~privileges that has resulted in the death of a patient.~~

12 SEC. 2. Section 2225 of the Business and Professions Code is
13 amended to read:

14 2225. (a) Notwithstanding Section 2263 and any other law
15 making a communication between a physician and surgeon or a
16 doctor of podiatric medicine and his or her patients a privileged
17 communication, those provisions shall not apply to investigations
18 or proceedings conducted under this chapter. Members of the
19 board, the Senior Assistant Attorney General of the Health Quality
20 Enforcement Section, members of the California Board of Podiatric
21 Medicine, and deputies, employees, agents, and representatives of
22 the board or the California Board of Podiatric Medicine and the
23 Senior Assistant Attorney General of the Health Quality
24 Enforcement Section shall keep in confidence during the course
25 of investigations, the names of any patients whose records are
26 reviewed and shall not disclose or reveal those names, except as
27 is necessary during the course of an investigation, unless and until
28 proceedings are instituted. The authority of the board or the
29 California Board of Podiatric Medicine and the Health Quality
30 Enforcement Section to examine records of patients in the office
31 of a physician and surgeon or a doctor of podiatric medicine is
32 limited to records of patients who have complained to the board
33 or the California Board of Podiatric Medicine about that licensee.

34 (b) Notwithstanding any other law, the Attorney General and
35 his or her investigative agents, and investigators and representatives
36 of the board or the California Board of Podiatric Medicine, may
37 inquire into any alleged violation of the Medical Practice Act or
38 any other federal or state law, regulation, or rule relevant to the
39 practice of medicine or podiatric medicine, whichever is applicable,

1 and may inspect documents relevant to those investigations in
2 accordance with the following procedures:

3 (1) Any document relevant to an investigation may be inspected,
4 and copies may be obtained, where patient consent is given.

5 (2) Any document relevant to the business operations of a
6 licensee, and not involving medical records attributable to
7 identifiable patients, may be inspected and copied if relevant to
8 an investigation of a licensee.

9 (c) *(1) Notwithstanding subdivision (b) or any other law, if*
10 ~~the board receives a report pursuant to Section 802.5 or 805 in any~~
11 ~~case that involves the death of a patient from a prescription drug~~
12 ~~overdose, the board may inspect and copy the medical records of~~
13 ~~the deceased patient without the consent of the patient's next of~~
14 ~~kin or a court order in order to determine the extent to which the~~
15 ~~death was the result of a prescriber's inappropriate conduct the~~
16 ~~physician and surgeon's conduct in violation of the Medical~~
17 ~~Practice Act.~~

18 *(2) The Legislature finds and declares that the authority created*
19 *in the board pursuant to this section, and a physician and surgeon's*
20 *compliance with this section, are consistent with the public interest*
21 *and benefit activities of the federal Health Insurance Portability*
22 *and Accountability Act (HIPAA).*

23 (d) In all cases in which documents are inspected or copies of
24 those documents are received, their acquisition or review shall be
25 arranged so as not to unnecessarily disrupt the medical and business
26 operations of the licensee or of the facility where the records are
27 kept or used.

28 (e) If documents are lawfully requested from licensees in
29 accordance with this section by the Attorney General or his or her
30 agents or deputies, or investigators of the board or the California
31 Board of Podiatric Medicine, the documents shall be provided
32 within 15 business days of receipt of the request, unless the licensee
33 is unable to provide the documents within this time period for good
34 cause, including, but not limited to, physical inability to access
35 the records in the time allowed due to illness or travel. Failure to
36 produce requested documents or copies thereof, after being
37 informed of the required deadline, shall constitute unprofessional
38 conduct. The board may use its authority to cite and fine a
39 physician and surgeon for any violation of this section. This remedy

1 is in addition to any other authority of the board to sanction a
2 licensee for a delay in producing requested records.

3 (f) Searches conducted of the office or medical facility of any
4 licensee shall not interfere with the recordkeeping format or
5 preservation needs of any licensee necessary for the lawful care
6 of patients.

7 SEC. 3. Section 2234 of the Business and Professions Code is
8 amended to read:

9 2234. The board shall take action against any licensee who is
10 charged with unprofessional conduct. In addition to other
11 provisions of this article, unprofessional conduct includes, but is
12 not limited to, the following:

13 (a) Violating or attempting to violate, directly or indirectly,
14 assisting in or abetting the violation of, or conspiring to violate
15 any provision of this chapter.

16 (b) Gross negligence.

17 (c) Repeated negligent acts. To be repeated, there must be two
18 or more negligent acts or omissions. An initial negligent act or
19 omission followed by a separate and distinct departure from the
20 applicable standard of care shall constitute repeated negligent acts.

21 (1) An initial negligent diagnosis followed by an act or omission
22 medically appropriate for that negligent diagnosis of the patient
23 shall constitute a single negligent act.

24 (2) When the standard of care requires a change in the diagnosis,
25 act, or omission that constitutes the negligent act described in
26 paragraph (1), including, but not limited to, a reevaluation of the
27 diagnosis or a change in treatment, and the licensee's conduct
28 departs from the applicable standard of care, each departure
29 constitutes a separate and distinct breach of the standard of care.

30 (d) Incompetence.

31 (e) The commission of any act involving dishonesty or
32 corruption that is substantially related to the qualifications,
33 functions, or duties of a physician and surgeon.

34 (f) Any action or conduct that would have warranted the denial
35 of a certificate.

36 (g) The practice of medicine from this state into another state
37 or country without meeting the legal requirements of that state or
38 country for the practice of medicine. Section 2314 shall not apply
39 to this subdivision. This subdivision shall become operative upon

1 the implementation of the proposed registration program described
2 in Section 2052.5.

3 (h) The failure by a certificate holder, in the absence of good
4 cause, to attend and participate in an interview scheduled within
5 30 days of notification from the board. This subdivision shall only
6 apply to a certificate holder who is the subject of an investigation
7 by the board.

8 SEC. 4. Section 11529 of the Government Code is amended
9 to read:

10 11529. (a) The administrative law judge of the Medical Quality
11 Hearing Panel established pursuant to Section 11371 may issue
12 an interim order suspending a license, imposing drug testing,
13 continuing education, supervision of procedures, limitations on
14 the authority to prescribe, furnish, administer, or dispense
15 controlled substances, or other license restrictions. Interim orders
16 may be issued only if the affidavits in support of the petition show
17 that the licensee has engaged in, or is about to engage in, acts or
18 omissions constituting a violation of the Medical Practice Act or
19 the appropriate practice act governing each allied health profession,
20 or is unable to practice safely due to a mental or physical condition,
21 and that permitting the licensee to continue to engage in the
22 profession for which the license was issued will endanger the
23 public health, safety, or welfare.

24 (b) All orders authorized by this section shall be issued only
25 after a hearing conducted pursuant to subdivision (d), unless it
26 appears from the facts shown by affidavit that serious injury would
27 result to the public before the matter can be heard on notice. Except
28 as provided in subdivision (c), the licensee shall receive at least
29 15 days' prior notice of the hearing, which notice shall include
30 affidavits and all other information in support of the order.

31 (c) If an interim order is issued without notice, the administrative
32 law judge who issued the order without notice shall cause the
33 licensee to be notified of the order, including affidavits and all
34 other information in support of the order by a 24-hour delivery
35 service. That notice shall also include the date of the hearing on
36 the order, which shall be conducted in accordance with the
37 requirement of subdivision (d), not later than 20 days from the
38 date of issuance. The order shall be dissolved unless the
39 requirements of subdivision (a) are satisfied.

1 (d) For the purposes of the hearing conducted pursuant to this
2 section, the licentiate shall, at a minimum, have the following
3 rights:

4 (1) To be represented by counsel.

5 (2) To have a record made of the proceedings, copies of which
6 may be obtained by the licentiate upon payment of any reasonable
7 charges associated with the record.

8 (3) To present written evidence in the form of relevant
9 declarations, affidavits, and documents.

10 The discretion of the administrative law judge to permit
11 testimony at the hearing conducted pursuant to this section shall
12 be identical to the discretion of a superior court judge to permit
13 testimony at a hearing conducted pursuant to Section 527 of the
14 Code of Civil Procedure.

15 (4) To present oral argument.

16 (e) Consistent with the burden and standards of proof applicable
17 to a preliminary injunction entered under Section 527 of the Code
18 of Civil Procedure, the administrative law judge shall grant the
19 interim order if, in the exercise of discretion, the administrative
20 law judge concludes that:

21 (1) There is a reasonable probability that the petitioner will
22 prevail in the underlying action.

23 (2) The likelihood of injury to the public in not issuing the order
24 outweighs the likelihood of injury to the licensee in issuing the
25 order.

26 (f) In all cases in which an interim order is issued, and an
27 accusation is not filed and served pursuant to Sections 11503 and
28 11505 within 15 days of the date on which the parties to the hearing
29 on the interim order have submitted the matter, the order shall be
30 dissolved.

31 Upon service of the accusation the licensee shall have, in addition
32 to the rights granted by this section, all of the rights and privileges
33 available as specified in this chapter. If the licensee requests a
34 hearing on the accusation, the board shall provide the licensee with
35 a hearing within 30 days of the request, unless the licensee
36 stipulates to a later hearing, and a decision within 15 days of the
37 date the decision is received from the administrative law judge, or
38 the board shall nullify the interim order previously issued, unless
39 good cause can be shown by the Division of Medical Quality for
40 a delay.

1 (g) If an interim order is issued, a written decision shall be
2 prepared within 15 days of the hearing, by the administrative law
3 judge, including findings of fact and a conclusion articulating the
4 connection between the evidence produced at the hearing and the
5 decision reached.

6 (h) Notwithstanding the fact that interim orders issued pursuant
7 to this section are not issued after a hearing as otherwise required
8 by this chapter, interim orders so issued shall be subject to judicial
9 review pursuant to Section 1094.5 of the Code of Civil Procedure.

10 The relief that may be ordered shall be limited to a stay of the
11 interim order. Interim orders issued pursuant to this section are
12 final interim orders and, if not dissolved pursuant to subdivision
13 (c) or (f), may only be challenged administratively at the hearing
14 on the accusation.

15 (i) The interim order provided for by this section shall be:

16 (1) In addition to, and not a limitation on, the authority to seek
17 injunctive relief provided for in the Business and Professions Code.

18 (2) A limitation on the emergency decision procedure provided
19 in Article 13 (commencing with Section 11460.10) of Chapter 4.5.